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MCVEIGH'S ADM'R V. CHAMBERLAIN.—Decided at Richmond, December 3, 1896.—*Riely, J. Absent, Keith, P.\**:

1. PRESUMPTION OF PAYMENT—*Bond not due—Evidence of payment—Checks imply money due by drawer or money loaned him.* Upon satisfactory proof that one has executed and delivered his obligation to another, for an interest in real estate contingent upon the obligee surviving his mother, which obligation is only payable when, and on condition that, the obligee survives his mother, no presumption of payment arises in the lifetime of the mother, and evidence of payment during the lifetime of the mother, and before any liability has accrued to the obligee should be strong and clear. The production of cancelled checks of the obligor to the obligee, or an acceptance of said obligor to the obligee, do not constitute such proof. They rather imply, in the absence of other evidence, that they were given in payment of a debt then due and payable from the obligor to the obligee, or for money then lent by the obligee to the obligor. In the case at bar the evidence does not warrant a presumption of payment.

2. EVIDENCE—*Competency of witness—Adverse interest.* Where the subject of investigation is a bond, and the legatee and devisee of the obligor is first examined as a witness in behalf of the estate of the obligor, this renders the obligee a competent witness in his own behalf under section 3346 of the Code.

3. EVIDENCE—*Exception to deposition—Attention of trial court.* Unless the record shows that an exception to the deposition of a witness, for incompetency or other cause, was brought to the attention of the trial court at the hearing, it will be taken by the appellate court to have been waived.

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POWELL'S EXECUTOR V. CITY OF RICHMOND.—Decided at Richmond, December 3, 1896.—*Keith, P.*:

1. TAXES IN CITY OF RICHMOND—*Duration of lien.* There is no limitation on the time within which the city of Richmond may enforce the lien which it has under its charter for taxes assessed by the city on real estate therein. The city charter prescribes no limit, and the amendment to section 674 of the Code, approved January 18, 1888, leaves the rights of the city unaffected by section 636 of the Code.

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REID BROS. & CO. V. NORFOLK CITY R. R. CO. AND OTHERS.—Decided at Richmond, December 10, 1896.—*Cardwell, J.*:

1. CHANCERY PLEADING—*Dismissing bill—Leave to amend—Failure to state ground of amendment—Appellate Court.* Although a decree dismissing a bill for want of equity shows that leave was asked to amend the bill and was refused, the appellate court will not reverse the decree when the record fails to disclose in what respect the complainant proposed to amend.

2. INJUNCTIONS—*Prohibitions—Dissolution—When appellate court will not interfere.* Upon a pure bill of injunction to enjoin the performance of certain acts, but containing no prayer for any mandatory acts to be performed where the injunction as prayed has been granted, without any mandatory provision, if it

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\* Judge Keith decided the case in the court below.

appears that the injunction has been dissolved by the trial court, and pending an appeal (without supersedeas) from the order of dissolution the acts enjoined have been performed, the court of appeals will not disturb the action of the trial court, as a reversal would be unavailing to the complainant, even if the decree were wrong.

3. **SERVITUDES**—*Substitution of electricity for horses.* The substitution of a double track electric street car line for a single track horse car line is not an additional servitude or burden on the street for which the abutting lot owners are entitled to compensation.

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**COLLINS AND OTHERS v. SUTTON.**—Decided at Richmond, December 10, 1896.—*Harrison, J.*

1. **CHANCERY PLEADING**—*Want of jurisdiction—When and where objection made.* An objection to a bill for want of jurisdiction may be taken for the first time in the appellate court, though there was no demurrer to the bill in the trial court.

2. **CHANCERY JURISDICTION**—*Disputed boundaries—When courts of equity will interpose.* Courts of equity will not interpose to ascertain boundaries, unless, in addition to the confusion of the controverted boundaries, there is suggested some peculiar equity which has arisen from the conduct, situation, or relation of the parties, but will leave the parties to their remedies at law.

3. **CHANCERY JURISDICTION**—*Bill for discovery—What bill must charge when the demand is legal.* When an attempt is made to enforce a legal demand in a court of equity, and the alleged ground of equity is the need of a discovery, the bill must aver that the discovery is material and necessary. A bill which charges that the defendant has in his possession a deed and plat which will show the true boundaries of land claimed by the complainant, and which prays for the production of the deed, but does not aver that the deed is necessary for the purpose, but admits that the courses and distances are well known to the complainants, is bad on demurrer. The complainant has an adequate remedy at law.

4. **INJUNCTIONS**—*Trespass—Irreparable injury—Insolvency of defendant.* A court of equity will not enjoin a trespass at the instance of a party averring a good legal title, unless the bill charges that irreparable injury will result if the injunction is denied—setting forth the facts constituting the injury—or that the defendant is insolvent.